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Summary record of the 1546th meeting

Topic:
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Commission at the present time to determine the instances in which sanctions were legitimate or illegitimate, for it would not be taking up that question until it came to part II of the draft. For the moment, it was sufficient to affirm that an infringement of a subjective right of a State that would normally be an internationally wrongful act was not wrongful if it represented a legitimate reaction to an internationally wrongful act committed by that State.

29. As to the placing of article 30, it was logical to consider the case of legitimate application of a sanction after that of consent by the injured State, for the two cases had a common denominator, namely, the participation of the State in respect of which action was taken. In the first case, the State participated because it gave its consent to an act that would otherwise be wrongful, and, in the second case, because it had itself previously committed an internationally wrongful act. That element of participation did not exist in other cases, such as *force majeure* and fortuitous event, for example.

30. Some members of the Commission had wondered whether an actual decision and not simply a recommendation was required in the case of a sanction applied pursuant to a decision of an international organization. He preferred the word "decision", proposed by Mr. Jagota, since it seemed to be the most neutral term. It did not fall within the purview of the Commission to determine in what instances a decision or a recommendation of the United Nations was binding on the Member States. In his opinion, it sufficed to say that a measure would no longer be internationally wrongful if it was carried out in implementation of a decision of a competent international organization, even if the measure in question was not obligatory for the member States of the organization and it had simply been recommended. Obviously, it could well be asked whether that rule was also applicable in the case of States that were not members of the international organization that had adopted the particular decision or recommendation.

31. As to the term "sanction", which some members of the Commission appeared to interpret in a restrictive manner, he would have no objection if it were replaced by the expression "retaliatory measure", or "countermeasure".

32. It should be noted that, in the two instances of legitimate application of a sanction, namely, where the sanction was applied directly by the injured State against the State that had committed an internationally wrongful act against it, and where the sanction was applied on the basis of a decision taken by a competent international organization (which might entrust application of the sanction to the injured State itself, to another State, to a number of States or even to all of the States members of the organization), the internationally wrongful act had been committed *beforehand*. Sir Francis Vallat considered, however, that it was possible to take preventive measures. But it was difficult to accept that an international organization would go so far as to undertake a measure which infringed

an international subjective right of a State for purely preventive reasons. Even if that hypothesis were admissible, it should not be implied that an individual State could take preventive measures. In any case, if the Commission decided to take account of that type of measure, it should do so in a paragraph separate from the paragraph enunciating the general rule.

33. With regard to the wording of article 30, he welcomed the proposal by Mr. Jagota (para. 18 above), but was also ready to consider the proposals by Mr. Ushakov (1544th meeting, para. 28) and Mr. Yankov (para. 24 above). Unlike Mr. Ushakov, however, he thought it preferable not to include a reference to part II of the draft articles.

34. Mr. VEROSTA proposed that the title of article 30 should be replaced by the following: "Legitimate reaction against a wrongful act of the State".

35. The CHAIRMAN said that if there was no objection he would take it that the Commission agreed to refer draft article 30 and the proposals by members of the Commission to the Drafting Committee.

*It was so decided.*⁵

The meeting rose at 6 p.m.

⁵ For consideration of the text proposed by the Drafting Committee, see 1567th meeting, paras. 1, 8, and 50-52.

1546th MEETING

Wednesday, 6 June 1979, at 10.10 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Francis, Mr. Jagota, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Visit of members of the International Court of Justice

1. The CHAIRMAN welcomed Sir Humphrey Waldock, President of the International Court of Justice, Mr. Elias, Vice-President of the Court, and Mr. Morozov, a judge of the Court. He reminded members that Sir Humphrey Waldock and Mr. Elias had each been chairman of the International Law Commission and, for many years, had made outstanding contributions to its work: Sir Humphrey by his role in the codification of the law of treaties and of succession of States in respect of treaties, both as Special Rapporteur and as

expert consultant to the United Nations Conference on the Law of Treaties; Mr. Elias by his participation in the codification of various topics under study by the Commission and the decisive part he had played as Chairman of the Committee of the Whole at the Conference on the Law of Treaties.

2. Mr. Morosov, who for 20 years had represented his country in the Sixth Committee of the General Assembly, was one of the jurists who had most influenced the general direction of the codification work of the United Nations, by constantly stressing the need to codify a law adapted to the realities of the modern world. He had very often played a decisive part in the adoption of pertinent recommendations submitted by the Sixth Committee to the General Assembly, including the recommendations which had led to the adoption of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and those which, in the early 1960s, had established the broad outline of the programme of codification by which the work of the Commission was still largely directed. Mr. Morozov had also made an important contribution to the work of several special committees of the United Nations on questions relating to international law, and to the work of the Commission on Human Rights, of which he had been a member for 20 years.

3. An examination of the individual tasks of the Court and of the Commission naturally revealed certain differences. The Commission had an essentially legislative role, since it was responsible for drafting and formulating legal rules and proposing them to States for adoption as codified international law. The Court, on the other hand, performed a judicial function and, in doing so, was called upon to interpret and apply international legal rules when hearing the cases submitted to it. The work of the Commission was thus of a more general nature, whereas that of the Court consisted in giving judgements in specific cases, taking into account the concrete problems raised by the dispute in question. But the basic distinction between the elaboration of law and its interpretation and application certainly did not mean that those two legal operations could be conducted separately.

4. Indeed, the work of the Court in interpreting and applying the law was an essential complement to the Commission's work of progressive development and codification of international law. The judgements and opinions of the Court and other judicial organs, in so far as they reflected international law and its development, were, together with State practice and doctrine, constantly taken into consideration by the Commission in preparing its draft. The Commission was even required to proceed in the way by the provisions of its own Statute. Furthermore, in performing its judicial function, the Court was frequently called upon, and would probably be increasingly called upon in the future, to interpret and apply multilateral conventions to the specific disputes brought before it, in particular the codification conventions adopted by States on the basis of the drafts prepared by the Commission.

5. There was thus complementarity between the functions of the two bodies and interlocking of the results of their work. But the natural bond between the Court and the Commission really derived from something still more fundamental, namely, their ultimate object. For the Court and the Commission both pursued the same purpose, which was to promote peace and security, and international co-operation based on the rule of law. It was there, above all, that the true *raison d'être* of the bond uniting the Court and the Commission, and of the relations that had been established between them, was to be found.

6. He also wished to stress the major contribution made to the development of those relations by the fact that many members of the Commission, as well as representatives appointed to other bodies participating in the work of codification and progressive development of international law undertaken by the United Nations, had subsequently become members of the Court. At the present time, more than half the members of the Court were former members of the Commission. Other members of the Court were former representatives of their countries on bodies such as the Sixth Committee of the General Assembly. There were also many who, in the past, had taken part in codification conferences convened under the auspices of the United Nations. The members of the Court were thus well acquainted with all the details of the results of the codification process, and, having been personally involved in that process, were quite familiar with its methods and needs.

7. The Court had accordingly shown understanding to the Commission by allowing it to avail itself of the assistance, in an individual and personal capacity, of Mr. Ago, who had recently been elected a judge of the Court, to complete, without troublesome interruption, the work in progress on the first part of the draft articles on State responsibility. He wished to take that opportunity to express, once again, his gratitude to the Court and to Mr. Ago.

8. Sir Humphrey WALDOCK (President of the International Court of Justice), thanking the Chairman for his words of welcome, said that Judge Elias and Judge Morozov joined him in conveying to the Commission the greetings of the Court.

9. Five years earlier, when he had been entrusted by the Court with the task of congratulating the Commission on the celebration of its silver jubilee, the Commission had already had to its credit the adoption of several important conventions by States at diplomatic conferences. Since that time it had drafted further conventions—on succession of States in respect of treaties and on the representation of States in their relations with international organizations of a universal character—as well as an impressive number of reports on other topics. The success of the Commission's work was not to be measured solely in terms of the conventions it produced: at a time when not only the rules of international law, but the very structure of the international community, were undergoing an unprecedented evolution, the importance of the Commis-

sion's reports in consolidating legal opinion and furthering the general consensus in many branches of international law was a factor of the greatest consequence for the future security of international law.

10. The Chairman had rightly remarked on the complementary character of the work of the Commission and the Court; the importance of that relationship for the Court, particularly in regard to the law of the sea and the law of treaties, was clearly to be seen not only in its judgements but also in the pleadings of counsel before it. There had in fact been a certain interplay between the two bodies. Just as the Commission had helped to point the way for the Court on such matters as the continental shelf and certain aspects of the law of treaties, so the pronouncements of the Court had provided the basis for the Commission's codification and development of some important areas of the law. Among the examples that could be cited were its pronouncements on the régime of international straits in the *Corfu Channel* case, and on base lines in the *Fisheries* case; its treatment of the law of reservations to multilateral treaties in its advisory opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*; and its exposition, in a number of its judgements, of the principles governing the interpretation of treaties. That interplay, although inherent in the special functions of the Commission and the Court, was perhaps also due to the fact that nearly two thirds of the Court's present membership, including both its President and Vice-President, had formerly been members of the Commission. In his view, it was a source of strength to the Court that such a large proportion of its members had had the experience of working together in the arduous forum of the Commission's deliberations and he, for one, gladly acknowledged the debt he owed to the Commission for all he had learnt from participation in its work. He was sure that his feeling was shared by those of his colleagues who had had the same privilege, so in voicing the Court's good wishes for the success of the Commission's session, he would also convey their special greetings to the Commission.

Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/319)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR

ARTICLE 42 (Validity and continuance in force of treaties)

11. The CHAIRMAN invited the Special Rapporteur to introduce his eighth report on the question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/319) and, in particular, draft article 42, which read:

Article 42. Validity and continuance in force of treaties

1. The validity of a treaty or of the consent of a State or an international organization to be bound by a treaty may be impeached only through the application of the present draft articles.

2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present draft articles. The same rule applies to suspension of the operation of a treaty.

3. The preceding provisions are without prejudice to the obligations that may derive from the Charter, and particularly from Article 103.

12. Mr. REUTER (Special Rapporteur) said that part V of the draft articles on treaties concluded between States and international organizations or between two or more international organizations, which the Commission was now called upon to consider, corresponded to part V of the Vienna Convention on the Law of Treaties¹ concerning the invalidity, termination or suspension of the operation of a treaty. For many delegations at the United Nations Conference on the Law of Treaties, that part of the Vienna Convention had been, if not the most important, at least the most debatable part of the Convention; for some had seen in the attempt to eliminate the main defects of legal instruments a promise of more human and more equitable law, while others had feared that the examination of those defects might seriously endanger the stability of treaties.

13. Although the Vienna Convention had not yet entered into force, it was now known that those fears had been unfounded. Moreover, it mattered little that the Convention was not yet in force, since it was already gaining recognition in customary law. In its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*² and in its judgement concerning the jurisdiction of the Court in the *Fisheries Jurisdiction* case (*United Kingdom v. Iceland*),³ the International Court of Justice had relied on two of the most important articles in part V of the Vienna convention: article 60 (Termination or suspension of the operation of a treaty as a consequence of its breach) and article 62 (Fundamental change of circumstances).

14. He did not think the Commission would have any particular difficulties in adapting the articles in part V of the Vienna Convention to treaties concluded between States and international organization or between two or more international organizations. For it was the consensual concept of treaties that had triumphed in the Vienna Convention; and the Commission had taken the view that, if international

¹ For the text of the Convention, see *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287. The Convention is hereinafter referred to as the "Vienna Convention".

² *I.C.J. Reports 1971*, p. 16.

³ *I.C.J. Reports 1973*, p. 3.

organizations could conclude treaties, the general principles of consensus that governed the whole of the Vienna Convention could also apply to those treaties. It had therefore instructed the Special Rapporteur to follow the text of the Vienna Convention as closely as possible.

15. However, international organizations were not States: they had no sovereignty and were competent only in limited fields. As was stated in article 6 of the draft:⁴

The capacity of an international organization to conclude treaties is governed by the relevant rules of that organization.

From that basic principle another difference derived: whereas all States were equal in law and there were general rules valid for all States without exception, the same was not true of international organizations. It could therefore be argued that there was no law of international organizations, in so far as each international organization had its own individual status, and the rules applicable to one organization could not necessarily be extended to the others.

16. Thus if international organizations were to be able to conclude treaties, general rules must be applied to them which, *a priori*, should be the same as those applicable to States. But it was also necessary to take the special nature of international organizations into account. A middle way must therefore be sought which would accommodate those two facts.

17. Part V, section 1, of the draft, which contained four articles (articles 42 to 45), was devoted, as in the Vienna Convention, to general provisions. Article 42 of the draft corresponded to article 42 of the Vienna Convention and dealt with the validity and continuance in force of treaties.

18. In its commentary to article 39 of its draft articles on the law of treaties (which had become article 42 of the Vienna Convention), the Commission had stated very clearly that the purpose of the provisions of that article was

... as a safeguard for the stability of treaties, to underline in a general provision at the beginning of this part that the validity and continuance in force of a treaty is the normal state of things which may be set aside only on the grounds and under the conditions provided for...⁵

The Commission had indeed been well aware that part V of the Vienna Convention, which was to enumerate the defects of treaties, might give rise to fears as to the validity of the *pacta sunt servanda* rule. It had therefore set out to state a general principle guaranteeing the validity of treaties.

19. That objective was equally valid for treaties concluded between States and international organizations or between international organizations, and he had therefore followed article 42 of the Vienna Conven-

tion. But in that connexion he had asked himself two questions. He thought he could settle the first, and would only submit the second to the Commission.

20. Within the framework of its draft articles on the law of treaties, the Commission had considered the question whether the disappearance of a State could entail the disappearance of a treaty. That question did not generally arise in regard to multilateral treaties, except in the case of a restricted multilateral treaty, when the disappearance of one of the parties would jeopardize its object and purpose, but it certainly arose in regard to bilateral treaties. The Commission had decided to leave that case aside, however, as it had considered that the disappearance of a State raised a question of succession of States, and that all the problems arising out of a succession of States should be reserved in a special article (article 73) of the Convention.

21. The same question could arise when an international organization disappeared. It might well be asked what would become of a bilateral treaty if an international organization which was a party to it disappeared, as had the League of Nations, or if an international organization party to the treaty become a supranational organization or a State—a case already considered in the context of the succession of States in respect of treaties. Would the treaty then purely and simply disappear? He was not sure. But he thought that the Commission should exclude that question from its discussions and, when it came to consider article 73, should broaden the reservation made in that article concerning succession of States to exclude not only questions relating to a succession of States, but also questions relating to succession of an organization by another organization or succession of an organization by a State.

22. The second question, which arose out of the United Nations Charter, was more difficult to settle and had led him to add a third paragraph to article 42. Article 103 of the Charter provided that

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 30 of the Vienna Convention (Application of successive treaties relating to the same subject-matter) began with a reservation relating to Article 103 of the Charter. When drawing up article 30 of the draft under consideration, the Commission had also formulated a reservation concerning Article 103 of the Charter, but it had transferred that reservation to the end of the article and had drafted it rather differently, so as to avoid taking a position on the question whether Article 103 could be interpreted as applying to agreements concluded by international organizations.

23. It had already become apparent, in connexion with article 27, that the principle stated in Article 103, namely, that in contemporary international society absolute priority must be given to the provisions of the Charter, should be extended not only to treaties

⁴ For the text of all the articles adopted so far by the Commission, see *Yearbook*... 1978, vol. II (Part Two), pp. 124 *et seq.*, document A/33/10, chap. V, sect. B.1.

⁵ *Yearbook*... 1966, vol. II, p. 236, document A/6309/Rev.1, part II, chap. II, article 39, para. (1) of the commentary.

concluded by States but also, in many cases, to treaties concluded by international organizations and even to treaties concluded by the United Nations itself. It had been pointed out, by way of an example, that, in order to implement a Security Council resolution, the United Nations might be obliged to conclude an agreement that would be subordinate to that resolution, since the sole purpose of the agreement would be to facilitate the implementation of the resolution. Such an agreement would remain in force only if the resolution on which it was based remained in force. Thus the conclusion of an implementation agreement did not bind the Security Council, which could review and amend its resolution, thereby bringing the agreement to an end.

24. Article 103 of the Charter applied not only to the provisions of the Charter but also to instruments creating obligations under the Charter, namely, certain Security Council resolutions and certain judgements of the International Court of Justice. Article 103 was therefore of exceptional importance, and the problem it posed could arise in regard to several articles. Consequently he thought that, for the sake of harmony, it would be better to mention Article 103 once and for all in a single article, rather than refer to it several times in the draft. The Commission could consider that solution when it came to review the draft articles as a whole.

25. The reason why he had proposed adding to draft article 42 a paragraph 3 reading:

The preceding provisions are without prejudice to the obligations that may derive from the Charter, and particularly from Article 103,

was not only to emphasize that the problem posed by Article 103 of the Charter also arose in regard to article 42, but also to go a little further than in article 30, paragraph 6, which merely stated that

The preceding paragraphs are without prejudice to Article 103 of the Charter of the United Nations.

The problems raised by article 42 were not, in fact, unrelated to those raised by the articles on State responsibility which the Commission had examined at the current session, particularly the article on the consent of the injured State. With regard to that article, some members of the Commission had found it hard to accept that certain obligations could arise for States from a mere agreement, or even from mere consent. The same problem arose in regard to international organizations. He was aware of that problem, but he thought the Commission was obliged to take account of the fact that the United Nations was not like other organizations.

26. Mr. USHAKOV, referring to paragraph 1 of draft article 42, urged the need to devote separate provisions to the two broad categories of treaties to which the draft applied in accordance with article 1, namely, treaties concluded between one or more States and one or more international organizations, and treaties concluded between international organizations. In the case of article 42, that distinction should be made purely for reasons of form.

27. It was difficult to take a position on the general rule stated in paragraph 1 of article 42, since it affected other articles of the draft, not all of which had yet been formulated. It would be useful to know, for example, whether the draft would contain an article corresponding to article 52 of the Vienna Convention, which concerned coercion of a State by the threat or use of force. It was difficult to see how an international organization could have recourse to the threat or use of force against another international organization, or even how a State could take such action against an international organization.

28. According to article 42, paragraph 1, of the Vienna Convention, the consent of a State to be bound by a treaty could be impeached only through the application of that Convention. Hence the State in question must be a party to the Vienna Convention. According to paragraph 1 of the article under consideration, the consent of a State or an international organization to be bound by a treaty could be impeached only through the application of the draft articles. So far, however, the Commission had wisely left aside the question whether international organizations would be able to become parties to the international convention that might be adopted on the basis of the draft articles.

29. Paragraph 2 of the article under consideration raised a problem of terminology, in the first place. When referring to international organizations, would the Commission really use the expression "denunciation of a treaty", which was in common use with reference to States?

30. With regard to the words "as a result of the application of the provisions of the treaty", in the same paragraph, he pointed out that, whereas every State had the capacity to conclude treaties, that of an organization was limited by the rules of its constitution, as provided in article 6. Consequently the termination or denunciation of a treaty by an international organization, or the withdrawal of that organization, could not take place through the application of the provisions of the treaty if those provisions were not in conformity with the rules of the organization's constituent instrument. With regard to the relationship between the provisions of the treaty and the relevant rules of an organization, the Special Rapporteur had referred to article 27, entitled "Internal law of a State, rules of an international organization and observance of treaties". He had considered the case in which an international organization disappeared; but what would happen if an organization amended its rules on the conclusion of treaties? When the internal law of a State was not in conformity with its international commitments, that State was free to amend its internal law accordingly; for it was the same will that determined the content of its internal law and that of its obligations under international law. An international organization, on the other hand, was in a different position, since amendment of its rules was the prerogative of its member States. If they amended the rules in such a way that they were no longer in conformity with the provisions of a treaty concluded by the organization, would those rules prevail over the provisions of the

treaty? And even if the rules of the organization were not amended, the consent of that organisation to be bound by a treaty could be impeached, not through the application of the draft articles, but by reference to the existing rules of the organization. That case was provided for in article 27, paragraph 2. But what would happen if the rules were amended after the conclusion of the treaty? Could the consent of the organization be impeached through application of the new rules? That question was not dealt with in the Vienna Convention, because it could not arise for States.

31. With regard to paragraph 3 of article 42, it was not clear why the United Nations Charter should apply to all international organizations indiscriminately. He also wondered what was meant by "obligations that may derive from the Charter". And did paragraph 3 apply to the validity of treaties or to their termination, their denunciation or the withdrawal of a party? There did not appear to be any real relation between Article 103 of the Charter and the validity of treaties, their termination, denunciation or the withdrawal of a party. For Article 103 presupposed, in addition to the Charter, another valid treaty, and in that case obligations under the Charter prevailed over those under the treaty. Hence there appeared to be no direct link between paragraph 3 and the two preceding paragraphs.

32. Mr. YANKOV said that part V of the draft was an innovation as far as both international organizations and the law of treaties in general were concerned. Indeed, the parallel provisions of the Vienna Convention were described by the Special Rapporteur as "the most original and the most debated component" (A/CN.4/319, para. 1) of that Convention. There would of course be other innovations in the draft to meet the challenge of the increasingly important role of international organizations, especially as it involved their treaty-making capacity and their contribution to the international legal order. Part V was also concerned with providing for greater flexibility in regard to multilateral treaties in general and, in particular, to treaties to which not only States but also international organizations were parties. That did not mean, however, that the differences between States and international organizations in regard to treaty-making were disappearing. On the contrary, the more closely the role of international organizations was examined, the more apparent it became that they had a special capacity of their own. He therefore considered that the provisions of part V were well justified within the over-all scheme of the draft.

33. Draft article 42 laid down the general rule on the invalidity and termination of treaties, and was therefore of an essentially introductory nature. Such a provision was necessary in order to determine the machinery and procedures required in the event of the invalidity, termination or suspension of treaties to which international organizations were parties. At the same time, it was essential to avoid any facile analogy with the treaty-making capacity of States or with treaties between States. He agreed entirely that the main pur-

pose of draft article 42 was to provide for the stability of treaties, including treaties to which international organizations were parties.

34. There were sound reasons for introducing paragraph 3 at that point in the draft, as the Special Rapporteur had explained in paragraphs (6) to (12) of his commentary. None the less, it might perhaps be preferable, for the structure of the draft, to introduce a more general provision at an appropriate point, after the Commission had considered the remaining provisions of part V, to cover other instances of relationships between treaties and the United Nations Charter, in particular Article 103 of the Charter.

35. He would therefore suggest that the Commission accept paragraph 3 of draft article 42 provisionally, on the understanding that it could be reconsidered later in the light of any other provisions requiring such a reference.

36. Sir Francis VALLAT saw no reason, in the case of international organizations, to depart from the provisions of the Vienna Convention, on which paragraphs 1 and 2 of draft article 42 were based. He would therefore support those paragraphs.

37. Paragraph 3, on the other hand, was new and raised rather different questions. It could perhaps be argued that the paragraph was unnecessary since, as far as States Members of the United Nations were concerned, they would remain bound by Article 103 of the Charter irrespective of the terms of draft article 42; and as far as international organizations were concerned, they were not members of the United Nations and were unlikely to become so. Yet he could envisage the possibility of some marginal circumstances in which there might be doubts whether the situation differed because an international organization was a party to a treaty. His reaction to paragraph 3 was therefore akin to Mr. Yankov's: he thought it should be kept in mental square brackets, as it were, to indicate that there was a problem. At the same time, no harm would be done if at that point the paragraph was deleted, subject to any views that members might express later.

38. The question of succession, and more particularly of succession of States, was one which, in his view, should be considered later, in the context of the draft article corresponding to article 73 of the Vienna Convention. There was indeed a problem there but, in so far as it related to international organizations, it was of a different nature. In the Vienna Convention on Succession of States in respect of Treaties,⁶ succession of States was defined as "the replacement of one State by another in the responsibility for the international

⁶ For the text of the Convention, see *Official Records of the United Nations Conference on Succession of States in Respect of Treaties*, vol. III (United Nations publication, Sales No. E.79.V.10), document A/CONF.80/31.

relations of territory". That could hardly be held to apply in the case of international organizations at the present stage in the development of international relations, although it was possible to envisage certain cases touching on the problem, such as the disappearance of an international organization. There again, however, the concept was somewhat different, and his reaction, generally speaking, would be that, if an international organization was dissolved, that party to the treaty had disappeared.

39. He doubted whether a change in the rules of the organization would have any direct effect on the situation, since article 6 of the draft, which dealt with the capacity of international organizations to conclude treaties, must surely be governed by the rules in force at the time when the organization concluded the treaty, not by any subsequent change in those rules. On the other hand, there would be a very real problem if there were a change in the essential nature of the organization (for instance, if its functions were restricted in some way), but that problem would have to be resolved not in the context of the draft articles but in the light of the situation as it developed. Conversely, if the powers of the organization were extended, that would not, in his view, give rise to any particular difficulty as far as the treaty was concerned.

40. All those points could be examined when the Commission took up the provision corresponding to article 73 of the Vienna Convention, so they should not delay consideration of draft article 42.

41. Mr. VEROSTA said that paragraphs 1 and 2 of article 42 were acceptable, subject to some clarification, particularly in regard to the denunciation of a treaty by an international organization.

42. Paragraph 3 came somewhat unexpectedly. As its scope was fairly wide, it might perhaps be better to find another place for it in the draft.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (General Assembly resolution 33/139, part I, para. 5; General Assembly resolution 33/140, para. 5)

[Item 7 of the agenda]

MEMBERSHIP OF THE WORKING GROUP

43. The Chairman said that, having held consultations, he suggested that the Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier should be composed of the following members: Mr. Yankov (Chairman), Mr. Dadzie, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Riphagen, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam and Mr. Ushakov.

44. If there were no objections he would take it that the Commission decided to accept that proposal.

It was so decided.

Review of the multilateral treaty-making process (General Assembly resolution 32/48, para. 2)

[Item 6 of the agenda]

MEMBERSHIP OF THE WORKING GROUP

45. The CHAIRMAN reminded the Commission that the Working Group on review of the multilateral treaty-making process, set up at the previous session, had been a small one. That Group had been entrusted with the preliminary study of the question. Among the recommendations formulated by the Working Group in its report and approved by the Commission had been a recommendation that the Group should be reconstituted at the beginning of the thirty-first session, taking into account as far as possible the need for continuity of membership, and that it be asked to present a final report to the Commission not later than 30 June 1979.⁷

46. In view of the importance of the topic and the need to draft a report reflecting the views of all the members of the Commission, it had been agreed, during consultations, to enlarge the Group. He suggested the following membership: Mr. Quentin-Baxter (Chairman), Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat and Mr. Yankov.

47. If there were no objections, he would take it that the Commission decided to accept that proposal.

It was so decided.

The meeting rose at 1 p.m.

⁷ See *Yearbook... 1978*, vol. II (Part Two), p. 149, document A/33/10, para. 169.

1547th MEETING

Thursday, 7 June 1979, at 10.20 a.m.

Chairman: Mr. Milan ŠAHOVIĆ

Members present: Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Pinto, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Question of treaties concluded between States and international organizations or between two or more international organizations (continued) (A/CN.4/319)

[Item 4 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPporteur (continued)